

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1735 of 1999

with

LETTERS PATENT APPEAL No 1736 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and Sd/-

MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
YES
 2. To be referred to the Reporter or not? YES :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
NO
 5. Whether it is to be circulated to the Civil Judge? : NO
NO

AKBARBHAI RAHIMBHAI MOMIN

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for the Appellant
MR PK JANI for the Respondent No. 1
MR PG DESAI GP for the Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE D.H.WAGHELA

Date of decision: 30/12/1999

ORAL JUDGEMENT (Per R.K.Abichandani, J.)

Both these appeals involve common questions and have been argued together.

2. The appellants are aggrieved by the decision of the learned Single Judge rejecting their petitions for restraining the respondents from including in the voter's list of the Agriculturists Constituency of the Siddhpur Agricultural Produce Marketing Committee, the members of the managing committees of the co-operative societies dealing in milk and animal husbandry, because there has not been any declaration of intention of regulating purchase and sale of these items which are specified in the Schedule to the Gujarat Agricultural Produce Markets Act, 1963. The learned Single Judge construing the provisions of Section 11 of the said Act and the Circular dated 30.12.1982 held that the co-operative societies engaged in producing milk and in animal husbandry, but dispensing agricultural credit were also eligible for inclusion in the agricultural constituency. It has been held that the authorised officer has yet to decide whether they should be included in the voters list. The authorised officer, as defined in Rule 2 (ii) of the Rules framed under the said Act, who is the competent officer under Rules 5 to 9 to prepare and publish provisional list and after inviting objections prepare and publish voters list for all the three constituencies separately, has to decide as to which co-operative societies can be included in the agricultural constituency and that this Court cannot be expected to verify and examine the eligibility of all these voters who may be included in the voters list.

3. The learned counsel for the appellants contended that the Scheme of the said Act, particularly the meaning of the expression "agricultural produce" in Clause (i), "agriculturist" in Clause (ii), "cooperative marketing society" in Clause (v), "trader" in Clause (xxiii) of Section 2 and the provisions of Sections 5, 6 & 9 read with Section 24 indicated that only a co-operative society dealing with any of the regulated items of Schedule I which dispensed agricultural credit was qualified for forwarding the names of the members of its managing committee under Rule 7 (1) for preparation of the voters list under Rule 5 (1) for the purpose of election of eight agriculturists to the market committee

under Section 11 (1) (i) of the said Act. It was contended that the co-operative societies who deal in non-regulated items like milk for which there is no declaration made under Section 5 of the Act, cannot participate in the election of members of the market committees. Moreover, if a credit society advances credit only to the agriculturists who deal in non-regulated items, it would not be qualified for participating in electing the eight agriculturists under Section 11 (1) (i) of the Act. It was further argued that, even the objects of these milk co-operative societies did not qualify them for the purpose. Moreover, their bye-laws should sufficiently indicate that they were required to dispense credit also to the agriculturists who deal in the regulated items. The learned counsel referred to the decision of this Court in *HUSSEINBHAI IBRAHIMBHAI MALEK v. P.V.BHATT* reported in 20 (2) G.L.R. 38 and *GUNVANTRAI MANIBHAI DESAI v. B. NARSINHMN* reported in 25 (1) G.L.R. 603 on interpretation of Section 11 (1) (i) of the Act. In the latter decision, it was held that the fisheries societies, if they are not engaged in the produce or growth of the items listed in the Schedule appended to the said Act, cannot be included as societies dispensing agricultural credit in the market area. It was also held that if the milk societies dispense agricultural credit in the market area, meaning thereby that they are created for the purpose of production or growth of agricultural produce, the member of the managing committee of such societies will be entitled to be included in the voters list. If such societies dispense such agricultural credit in the market area, the members of the managing committee of such societies will be entitled to elect eight agriculturists. However, if such milk producing society simultaneously is engaged in the business of buying or selling or in processing of agricultural produce and also is holding a licence for the purpose, it will be a marketing society which will not have a right of representation for the purpose of electing eight agriculturists. The learned counsel contended that the question of dispensing credit in respect of regulated items of the Schedule raised before us was not addressed in the said decision. He relied upon the decision of this Court in *MEHSANA DISTRICT CO-OP. PURCHASE & SALES UNION LTD. v. DHADHUSAN BEEJ UTPADAK RUPANTAR AND VECHAN KARNARI SAHKARI MANDALI LTD.* reported in 1998 (1) G.L.H. 170 to contend that the Court can interfere even when the election process has commenced.

4. The learned counsel appearing for the respondents

Nos.1 & 2 submitted that the ambit of Section 11 (1) (i)

cannot be narrowed down by imposing the construction suggested on behalf of the petitioners. He submitted that the election process has already commenced and therefore the proper remedy for the petitioners would be to raise an election dispute at an appropriate stage. Reliance was placed on the decision of this Court in MEHSANA DISTRICT CO-OPERATIVE SALES & PURCHASE UNION LTD. v. STATE OF GUJARAT reported in 29 (2) G.L.R. 1060.

5. The learned counsel appearing for the respondent No.3 pointed out from one set of bye-laws of a milk producing society a rule enabling the society to dispense credit to its members for agricultural purposes and submitted that that would include any of the agricultural produce which is regulated. He however submitted that under Section 11 (1) (i) of the Act any co-operative society dispensing credit for any of the agricultural produce enumerated in the Schedule in the market area would be eligible to elect eight agriculturists. He relied upon the decision of the Division Bench in PATAN PROPER FAL AND SHAK BHAJI KHARID VECHAN SAHAKARI MANDLI LTD. v. PALI SHAK BHAJI AND FAL FUL ADI UGARNARAONI KHARID VECHAN SHAHKARI MANDLI LTD. reported in 1986 G.L.H. 430 for contending that disputes pertaining to elections can be ventilated and enforced by the machinery provided under the Special Act. It was held therein that preparation of electoral roll under the said Rule was an integral part of the process of election and the question as to whether the electoral roll should be modified at the instance of persons claiming to be voters or at the instance of those objecting to inclusion of names in the voters list would be a matter relating to election and the Court should not exercise jurisdiction by interfering during the election process.

6. The provision of Section 11 (1) (i) of the Act which falls for our consideration, to the extent it is relevant, reads as under:

"11 Constitution of market committee (1) Every market committee shall consist of the following members, namely:-

(i) eight agriculturists who shall be elected by members of managing committees of co-operative societies (other than co-operative marketing societies) dispensing agricultural credit in the market area."

Under this provision, members of managing committees of

co-operative societies other than marketing co-operative societies that are dispensing agricultural credit in the market area can elect eight agriculturists on the market committee. Thus, the only requirements for voting rights for the purpose would be (i) those whose names are forwarded by the co-operative society should be the members of its managing committee, (ii) such society should be a co-operative society other than a co-operative marketing society defined in Section 2 (v) of the Act as a society engaged in the business of buying or selling of agricultural produce or of processing of agricultural produce and holding a licence, and that (iii) such co-operative society should be a society dispensing agricultural credit in the market area. Therefore, such co-operative society which dispenses agricultural credit in the market area is qualified to send the members of its managing committee for inclusion in the voters list under Rule 5 (1) of the Rules for electing eight agriculturists. The agriculturists, who are candidates for such election, need not even be members of a co-operative society. Even if they are not dealing in any of the non-regulated items of agricultural produce mentioned in the Schedule, they are qualified for being elected. Just as the word "agriculturists" is not hedged by any such requirement, the words "dispensing agricultural credit in the market area" are also not hedged by any requirement that such co-operative society should necessarily be dispensing agricultural credit only for items regulated by a declaration under Section 5 of the said Act. The words "agricultural credit" would mean credit for agricultural purpose, and cannot be whittled down to mean that it should be a credit for a particular agricultural purpose. The only restriction is that it should be done in the market area declared under Section 6 of the said Act. The word "agriculture" is not defined in the Act and in its dictionary sense (The Concise Oxford Dictionary) it means "the science or practice of cultivating the soil and rearing animals". There are several items of agricultural produce enumerated under 12 heads in the Schedule and they include nine animal husbandry products. Milk, cattle, sheep, goat are also enumerated under that head. Grass and fodder and two specified cattle seeds are also mentioned under categories XI and XII. In fact, Section 11 (1) (i) does not connect dispensing agricultural credit in the market area with any particular category or type of agricultural produce. It does not say that the co-operative society should be dispensing agricultural credit for agricultural produce specified in the Schedule or the agricultural produce for which the Director may have declared his intention of regulating purchase and sale in the

specified area under Section 5 of the Act. The scope of Section 11 (1) (i) is wide enough to cover such co-operative societies as are dispensing credit for any agricultural purpose in the market area. Thus, neither the candidate-agriculturist nor the voter-member are linked with the Scheduled items or the regulated items. So long as the candidate is an agriculturist and the voters are members of the managing committee of a non-marketing co-operative society that dispenses agricultural credit in the market area, the requirements of Section 11 (1) (i) are satisfied and there is no warrant for superimposing a requirement that the dispensing of agricultural credit in the market area should be or also be for a particular purpose or for a particular agricultural produce. The ratio of the decision in MEHSANA CO-OPERATIVE S & P UNION (supra) where deletion of names from the final voters list was held to be ultra vires the Act warranting Court's interference has therefore no application to the present case.

7. Admittedly, the election process has started by the order dated 20.11.1999 of the Director fixing the election date on 20.2.2000 for the marketing committee. The programme referred to during the hearing shows that the provisional list of voters was to be published on 18.12.1999 and that has been done as stated by the learned counsel. The next step is of filing objections under Rule 8 (1) of the Rules against the names included in the provisional list. The petitioners have already filed the objections as stated by their learned counsel. The provisional list will be re-published inviting objections on 4.1.2000 and such objections are to be filed by 11.1.2000. The final list will be published on 15.1.2000. Preparation of voters list is a part of or a step towards the election process. A grievance regarding validity of the voters list can be made under Section 28 of the said Rules which provides the machinery for determination of an election dispute which touches the validity of an election only after the result of the election is declared. This is not an extraordinary or exceptional case that can justify interference under Article 226 of the Constitution of India by this Court. In fact, the law on this aspect in the particular context of preparation of a voters list under this very Rule is since long settled by two Division Bench decisions of this Court in PATAN F & S.S.M.LTD. (supra) and M.D.CO-OPERATIVE S & P UNION (supra) and is in no way diluted by the subsequent decision rendered in 1998 (1) G.L.H. 170 (supra).

8. In this view of the matter, the learned Single Judge was right in his decision that went against the petitioners. We find no merit in these appeals. These appeals are therefore dismissed.

Sd/-
(KMG Thilake)

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